

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**HUNTINGTON DIVISION**

UNITED STATES OF AMERICA

v.

CRIMINAL ACTION NO. 3:09-00244

ROGER GILMORE

**ORDER**

On Monday, February 22, 2010, the Court held a Sentencing Hearing in this case. At the hearing, the Court did not order the defendant to pay any restitution. Although the United States Attorney's Office provided notice of the date and time of the hearing to all identified victims, none appeared at the hearing. Following the hearing, however, the Court became aware that the Probation Office failed to comply with the requirements of 18 U.S.C. § 3664 by providing appropriate notice to all identified victims of their rights to claim restitution. As there are identifiable victims in this case, the Court finds such failure constitutes clear error. Therefore, the Court exercises its authority under Rule 35(a) of the Federal Rules of Criminal Procedure to correct the sentence.

In order to comply with the requirements of § 3664, the Court amends the defendant's original sentence only with respect to restitution. Contrary to the Court's finding at the hearing, the Court recognizes that restitution may be appropriate, but the amount of the victims' losses are not currently ascertainable. Therefore, pursuant to § 3664(d)(5), the Court withholds a final determination as to restitution and **DIRECTS** the Probation Office to give the required notice to all identified victims in accordance with § 3664 **on or before March 5, 2010**. With the required notice,

the Court **DIRECTS** the Probation Office to alert those victims that if they choose to submit an affidavit regarding the amount of their loss, they must do so **on or before March 19, 2010**. The Court **SCHEDULES** a hearing for **April 12, 2010, at 2:30 p.m.**, to calculate any restitution due.

As the defendant will be required to appear at the hearing, the Court further **DIRECTS** the United States Marshal to delay designation of a prison facility until after the hearing on April 12, 2010.

The Court **DIRECTS** the Clerk to send a copy of this Order to the defendant and counsel, the United States Attorney, the United States Probation Office, and the United States Marshal.

ENTER: February 25, 2010

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', is written over a horizontal line.

ROBERT C. CHAMBERS  
UNITED STATES DISTRICT JUDGE